conclusive. *Dyer Bros. v. Central Iron Works* (1920) 182 Calif. 588, 189 Pac. 444. If the amount is fixed with the intent of preventing a breach, it is construed to be a penalty. *Dubinsky v. Wells Bros.* (1914) 218 Mass. 232, 105 N. E. 1004; *Seeman v. Bieman* (1900) 108 Wis. 365, 84 N. W. 490. Where the object is to estimate the probable damage, it is generally held to be liquidated damages. *Florence Wagon Works v. Salmon* (1910) 8 Ga. App. 197, 68 S. E. 866; *Davidow v. Wadsworth Mfg. Co.* (1920) 211 Mich. 90, 178 N. W. 776; (1910) 20 YALE LAW JOURNAL, 153. If the sum agreed upon is not unreasonable, payment will be enforced irrespective of whether it is called a "penalty" or "liquidated damages." *In re Liberty Doll Co.* (1917, S. D. N. Y.) 242 Fed. 695; *Wise v. United States* (1919) 249 U. S. 361, 39 Sup. Ct. 303. In view of the almost universal practice of refusing to accept the terms selected by the parties as conclusive when injustice will ensue, the result reached by the instant case seems remarkable.

EVIDENCE—HEARSAY—RES GESTAE—SPONTANEOUS UTTERANCES.—The deceased was shot by an unknown person and was rendered speechless. Thirty minutes later, upon regaining his power of speech, he stated that a stranger had shot him. In the trial of the defendant for murder, this utterance was admitted. *Held,* that the evidence was properly admitted, since the deceased had had no opportunity to deliberate. *Commonwealth v. Puntario* (1922, Pa.) 115 Atl. 831.

The defendant was indicted for murder. The trial court excluded a self-serving statement made by him to a sheriff who arrived a few minutes after the shooting. *Held,* that a sufficient time had elapsed after the main event to render the statement inadmissible as part of the *res gestae. Sherman v. State* (1921, Okla.) 202 Pac. 521.

In several jurisdictions the utterance and the event must be absolutely contemporaneous to make the statement admissible. *Eastman v. Boston & Me. Ry.* (1896) 165 Mass. 342, 43 N. E. 115; *McCarrick v. Kealy* (1898) 70 Conn. 642, 40 Atl. 603. The instant cases apply the theory, advocated by Dean Wigmore and adopted by most states, that the utterance need not be contemporaneous to constitute a part of the same event, but must be made under the stress of some startling occurrence, and within a period of time so closely connected with it, that the mind of the declarant is still under the control of the excitement and incapable of fabrication. *Eby v. Travelers' Insurance Co.* (1917) 258 Pa. 525, 102 Atl. 209; 3 Wigmore, *Evidence* (1904) sec. 1747; (1919) 29 YALE LAW JOURNAL, 814. The admissibility of such evidence is within the reasonable discretion of the court. *Roach v. Great Northern Ry.* (1916) 133 Minn. 257, 158 N. W. 232. The mental condition of the declarant should properly be the controlling factor in such determination, since it is a better guaranty of trustworthiness than mere lapse of time. See Morgan, *A Suggested Classification of Utterances Admissible as Res Gestae* (1922) 31 YALE LAW JOURNAL, 229; see also (1914) 23 *ibid.* 282.

LANDLORD AND TENANT—COVENANT BY LESSEE TO PAY TAXES—TAXES PAYABLE AFTER EXPIRATION OF TERM.—The lessee covenanted to pay all taxes assessed, levied, or imposed upon the premises during the term. The lessor sued to recover for taxes which were assessed during the last year of the term, but not payable until after it had expired. *Held,* (three judges *dissenting*) that the plaintiff could recover. *Wall v. Hess* (1922) 232 N. Y. 472, 134 N. E. 536.

It is generally held that the lessee by assuming to pay taxes assessed "during the term" is under a duty to pay them, even though by law they are not due until after the expiration of the lease. *Baker v. Horan* (1917) 227 Mass. 415, 116 N. E. 808; *Ogden v. Getty* (1905) 100 App. Div. 430, 91 N. Y. Supp. 664; *Elliot v. Gantt* (1895) 64 Mo. App. 248; see Tiffany, *Landlord and Tenant* (1912) sec. 143.